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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,459	05/02/2001	Yuji Kawaguchi	0445-0300P	4434

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EXAMINER

PICKETT, JOHN GREGORY

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

3C

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/846,459	KAWAGUCHI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gregory Pickett	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 May 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☒ Claim(s) 1-7 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \*   c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species 1 consists of claims 1-6 and figures 1-10, species 2 consists of claim 7 and figures 11-16.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. During a telephone conversation with John Bailey on September 10, 2002 a provisional election was made with traverse to prosecute the invention of species 1, claims 1-6. Affirmation of this election must be made by applicant in replying to this Office action. Claim 7 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

4. The disclosure is objected to because of the following informalities: The term "faucet part" is not a commonly used term in the packaging art. Based on figure 2, item 21 and the applicant's description of the faucet part in the specification, the examiner assumes the term to be equivalent to a liner.

Appropriate correction is required.

### ***Claim Objections***

5. Claim 1 is objected to because of the following informalities: the conjunction, "open/close" is in improper grammatical form.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949).

In the present instance, claim 4 recites the broad recitation "oil containing-content", and the claim also recites "detergent and foodstuff" which is the narrower statement of the range/limitation.

7. Claims 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear if the “packaged detergent” of claim 5 or the “sheet-like detergent” of claim 6 are considered by the applicant to be inclusive in the invention. The claims do not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Graybill (USPN 2,872,097).

Graybill describes a hexahedral container 20 with a lid member P and a hinged juncture 10 on a backside edge of container 20 wherein lid member P is adapted to close over the opening of container 20. The front board of container 20 includes a concave cut out 6N. In addition, lid member P comprises a surface lid part 4F, a front surface lid part 2P', and side parts 1P and 3P vertically interposed between the surface lid part and the front surface lid part.

Graybill also describes baffle B lining the inner side of panels 1, 2 and 3 of container 20 with a concave cutout part 6N formed on the front board of baffle B. Container main body 20 and lid member P are formed by dividing severance guide lines 12 and 8 using perforations 11. Severance guide lines 8 extend obliquely downward from hinged juncture 10 and severance guide line 12 extends along the front board beneath concave cutout 6N.

Graybill further describes a tuck-tab 2' and tuck-slot 2'' constituting a lock part disposed beneath concave cutout 6N and adapted to lock the lower end of front surface lid part 2P' to front board 2.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graybill in view of Wood et al. (USPN 5,985,772).

Graybill describes a container as previously set forth. Graybill also teaches the use of the container for storing a wide range of products (Col. 1, ln 48-50).

Graybill does not describe a container formed of a paper base material, a printed layer covering an outer surface of the paper base material, an outer colored film covering, or an inner film covering.

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Wood et al. describes a packaging material consisting of a paper base material 240, a printed layer 220, an outer colored film 210, and an inner film 210. The outer film 210 and inner film 210 of Wood et al. consists of an aqueous borne acrylic coating having a natural color. The coatings can also be pigmented (Col. 8, ln 16-18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the material of Wood et al. in making the container of Graybill as a matter of design choice of materials commonly used in the packaging art.

In addition, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the container of Graybill to store any desired items, including the applicant's claimed items, since these items are common commercial items. Further, these items have not been disclosed as critical to the invention of the paper container.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graybill in view of Giblin et al. (USPN 5,320,279).

Graybill describes a container as previously set forth.

Graybill does not describe a separate liner inserted into the container, nor does Graybill specifically disclose a moisture proof material.

Giblin et al. describes a container for concentrated detergent with a separate liner 116. The container of Giblin et al. is made of moisture-proof material (Col. 2, ln 25-27).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add a moisture-proof liner as taught by Giblin et al. to the



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container of Graybill when using the container of Graybill for concentrated detergent in order to limit the exposure of the detergent product to air and moisture.

### **Conclusion**

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dixon discloses a reclosable flip-top carton with a locking tab.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

*GP*  
Gregory Pickett  
Examiner  
September 23, 2002



Mickey Yu  
Supervisory Patent Examiner  
Group 3700